

**IC 29**

**TITLE 29. PROBATE**

**IC 29-1**

**ARTICLE 1. PROBATE CODE**

**IC 29-1-1**

Chapter 1. General Provisions

**IC 29-1-1-1**

**Short title**

Sec. 1. This article shall be known and may be cited as the Probate Code.

*(Formerly: Acts 1953, c.112, s.101.) As amended by Acts 1982, P.L.171, SEC.1.*

**IC 29-1-1-2**

**Procedure; prior proceedings or rights**

Sec. 2. (a) The procedure herein prescribed shall govern all proceedings in probate brought after January 1, 1954; and also all further procedure in probate proceedings then pending, except to the extent that in the opinion of the court their application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(b) No act done in any proceeding commenced before January 1, 1954, and no accrued right, shall be impaired by its provisions. When a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of the law in force at the time, such provision shall remain in force and be deemed a part of this article with respect to such right, and notwithstanding any of the provisions of this article, the person or persons who shall be entitled to take or receive any property, right, power or interest on the final settlement and distribution of any estate pending or any trust being administered on January 1, 1954 shall be determined, and his or their rights, powers and interest shall be governed by the statutes and applicable decisions in force and effect immediately prior to January 1, 1954.

(c) If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

*(Formerly: Acts 1953, c.112, s.102.) As amended by Acts 1982, P.L.171, SEC.2.*

**IC 29-1-1-3**

**Definitions; rules of construction**

Sec. 3. (a) The following definitions apply throughout this article, unless otherwise apparent from the context:

- (1) "Child" includes an adopted child but does not include a grandchild or other more remote descendants, nor, except as provided in IC 29-1-2-5, a child born out of wedlock.
- (2) "Claims" includes liabilities of a decedent which survive, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, and all taxes imposed by reason of the person's death. However, for purposes of IC 29-1-2-1 and IC 29-1-3-1, the term does not include taxes imposed by reason of the person's death.
- (3) "Court" means the court having probate jurisdiction.
- (4) "Decedent" means one who dies testate or intestate.
- (5) "Devise" or "legacy", when used as a noun, means a testamentary disposition of either real or personal property or both.
- (6) "Devise", when used as a verb, means to dispose of either real or personal property or both by will.
- (7) "Devisee" includes legatee, and "legatee" includes devisee.
- (8) "Distributee" denotes those persons who are entitled to the real and personal property of a decedent under a will, under the statutes of intestate succession, or under IC 29-1-4-1.
- (9) "Estate" denotes the real and personal property of the decedent or protected person, as from time to time changed in form by sale, reinvestment, or otherwise, and augmented by any accretions and additions thereto and substitutions therefor and diminished by any decreases and distributions therefrom.
- (10) "Fiduciary" includes a:
  - (A) personal representative;
  - (B) guardian;
  - (C) conservator;
  - (D) trustee; and
  - (E) person designated in a protective order to act on behalf of a protected person.
- (11) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate, unless otherwise defined or limited by the will.
- (12) "Incapacitated" has the meaning set forth in IC 29-3-1-7.5.
- (13) "Interested persons" means heirs, devisees, spouses, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and different parts of a proceeding and must be determined according to the particular purpose and matter involved.
- (14) "Issue" of a person, when used to refer to persons who take by intestate succession, includes all lawful lineal descendants except those who are lineal descendants of living lineal descendants of the intestate.
- (15) "Lease" includes an oil and gas lease or other mineral

lease.

(16) "Letters" includes letters testamentary, letters of administration, and letters of guardianship.

(17) "Minor" or "minor child" or "minority" refers to any person under the age of eighteen (18) years.

(18) "Mortgage" includes deed of trust, vendor's lien, and chattel mortgage.

(19) "Net estate" refers to the real and personal property of a decedent less the allowances provided under IC 29-1-4-1 and enforceable claims against the estate.

(20) "Person" includes natural persons and corporations.

(21) "Personal property" includes interests in goods, money, choses in action, evidences of debt, and chattels real.

(22) "Personal representative" includes executor, administrator, administrator with the will annexed, administrator de bonis non, and special administrator.

(23) "Property" includes both real and personal property.

(24) "Protected person" has the meaning set forth in IC 29-3-1-13.

(25) "Real property" includes estates and interests in land, corporeal or incorporeal, legal or equitable, other than chattels real.

(26) "Will" includes all wills, testaments, and codicils. The term also includes a testamentary instrument which merely appoints an executor or revokes or revives another will.

(b) The following rules of construction apply throughout this article unless otherwise apparent from the context:

(1) The singular number includes the plural and the plural number includes the singular.

(2) The masculine gender includes the feminine and neuter.

*(Formerly: Acts 1953, c.112, s.103; Acts 1973, P.L.287, SEC.1.) As amended by Acts 1979, P.L.268, SEC.1; P.L.146-1984, SEC.1; P.L.152-1987, SEC.8; P.L.33-1989, SEC.31; P.L.254-1997(ss), SEC.28; P.L.176-2003, SEC.2.*

#### **IC 29-1-1-4**

##### **Legislative history**

Sec. 4. The report of the probate code study commission made pursuant to Acts 1949, c. 302, s. 5 and Acts 1951, c. 347, s. 2 may be consulted by the courts to determine the underlying reasons, purposes and policies of this article, and may be used as a guide in its construction and application.

*(Formerly: Acts 1953, c.112, s.104.) As amended by Acts 1982, P.L.171, SEC.3.*

#### **IC 29-1-1-5 Repealed**

*(Repealed by Acts 1971, P.L.407, SEC.2.)*

#### **IC 29-1-1-6**

##### **Disqualification of judges**

Sec. 6. When any judge or his spouse shall be related within the third degree of consanguinity, according to the civil law, to any of the parties or their attorneys, shall have drawn the will of the decedent, or shall be interested or have been counsel in any probate proceeding or any matter therein, the same shall be grounds for disqualifying such judge from acting in a controverted matter with respect to which his disqualification exists. When grounds for disqualification exist, the judge may refuse to act as judge therein; or, upon filing of a petition to disqualify such judge, stating the grounds therefor, by any person interested in the particular matter with respect to which his disqualification exists, the judge must not act therein. The grounds for disqualification stated herein are enumerated as additional grounds, and not in limitation of applicable grounds for disqualification provided by statute or by Supreme Court rule with respect to trial judges generally.

*(Formerly: Acts 1953, c.112, s.106.)*

#### **IC 29-1-1-7**

##### **Rules and forms of procedure**

Sec. 7. The court may promulgate rules and forms of procedure for probate proceedings, not inconsistent with the provisions of this article nor with such rules and forms as are promulgated by the supreme court. If in any probate proceeding a situation arises which is not provided for by any statute or rule of procedure, the court may formulate and declare a rule of procedure for that particular case.

*(Formerly: Acts 1953, c.112, s.107.) As amended by Acts 1982, P.L.171, SEC.4.*

#### **IC 29-1-1-8**

##### **Repealed**

*(Repealed by Acts 1971, P.L.407, SEC.2.)*

#### **IC 29-1-1-9**

##### **Petitions**

Sec. 9. Every application to the court, unless otherwise provided, shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or substance in any petition, nor the absence of a petition, shall invalidate any proceedings. Interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in another appropriate manner.

*(Formerly: Acts 1953, c.112, s.109.) As amended by P.L.118-1997, SEC.6.*

#### **IC 29-1-1-10**

##### **Notice of filings; objections or answers**

Sec. 10. Where, pursuant to law, order of court, or the request of the moving party, notice of the filing of any report, account, claim, petition, motion or other pleading to interested persons is required before submission of the same to the court, any interested person, on

or before the day set for hearing, may file written objections or answers thereto, and, upon special order or general rule of the court, objections or answers thereto must be filed in writing as a prerequisite of being heard by the court.

*(Formerly: Acts 1953, c.112, s.110.)*

#### **IC 29-1-1-11**

##### **Notice to interested persons**

Sec. 11. No notice to interested persons need be given except as specifically provided for in this article or as ordered by the court. When no notice is required by this article, the court may require such notice as it deems desirable by a general rule or by an order in a particular case. Notice is required as follows:

(1) Notice as prescribed by this chapter must be given to every interested person or to one who can bind an interested person as described in section 20(a)(1) through 20(a)(3) of this chapter or IC 29-3-2-4. Notice may be given both to a person and to another who may bind him.

(2) Notice is given to unborn or unascertained persons, who are not represented as described in section 20(a)(1) through 20(a)(3) of this chapter or IC 29-3-2-4, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

*(Formerly: Acts 1953, c.112, s.111.) As amended by Acts 1982, P.L.171, SEC.5; P.L.118-1997, SEC.7.*

#### **IC 29-1-1-12**

##### **Service of notice**

Sec. 12. Unless waived and except as otherwise provided by law, all notices required by this article to be served upon any person shall be served as the court shall direct by rule or in a particular case, either:

(a) by delivering a copy of the same to such person or by leaving a copy of the same at his last and usual place of residence, at least ten (10) days before the hearing, if he is a resident of the state of Indiana;

(b) by publication, if the person is a nonresident of the state of Indiana or if his residence is unknown, once each week for three

(3) weeks consecutively in some newspaper printed and circulating in the county where said court is held, the first day of publication to be at least thirty (30) days prior to the date set for hearing; or in case there be no newspaper printed in said county, then in some newspaper circulating in the county where the proceeding is pending, and designated by the judge or clerk;

(c) by registered or certified mail, requesting a return receipt, addressed to such person located in the United States, at his address stated in the petition for the hearing, to be posted by depositing in any United States post office in this state at least fourteen (14) days prior to the date set for hearing in said

notice;

(d) by personal service on nonresidents to be served by any officer authorized to serve process in the county of the nonresident, which notice shall be served at least fourteen (14) days prior to the date set for hearing in such notice; or

(e) by any combination of two (2) or more of the above.

In all cases where service by publication is ordered but personal service or service by registered mail is not ordered, all persons directed by the provisions of this article, or by order of the court, to be notified, whose names and addresses are known or can by reasonable diligence be ascertained by the party charged with the duty of giving such notice, shall in addition to such published notice be served by a written notice by United States mail, at least fourteen (14) days prior to the date set for hearing in said notice.

The personal representative or party charged with the duty of giving said notice shall furnish the clerk with sufficient copies of said notice, prepared for mailing, and the clerk shall mail the same. *(Formerly: Acts 1953, c.112, s.112; Acts 1955, c.258, s.1; Acts 1961, c.50, s.2.) As amended by Acts 1982, P.L.171, SEC.6; P.L.118-1997, SEC.8.*

#### **IC 29-1-1-13**

##### **Service by publication and mail; personal service**

Sec. 13. Service by publication and by mail shall be made by the clerk at the instance of the party who requires such service to be made. Personal service may be made by any competent person unless otherwise directed by the court or the provisions of this article.

*(Formerly: Acts 1953, c.112, s.113.) As amended by Acts 1982, P.L.171, SEC.7.*

#### **IC 29-1-1-14**

##### **Service upon attorney**

Sec. 14. (a) If an attorney shall have entered his appearance in writing for any person in any probate proceeding or matter pending in the court, all notices required to be served on the person in such proceeding or matter may be served on the attorney and such service shall be in lieu of service upon the person for whom the attorney appears.

(b) Notices to the personal representative may similarly be served on his attorney of record.

*(Formerly: Acts 1953, c.112, s.114.)*

#### **IC 29-1-1-15**

##### **Form of notice**

Sec. 15. The form of such notice may be prescribed by the court by rule or order. A notice shall be deemed sufficient if it shall set forth the nature of the petition or paper filed or the action requested, and the time fixed for hearing thereof, or the time fixed for filing a responsive pleading, or objections thereto.

*(Formerly: Acts 1953, c.112, s.115.)*

**IC 29-1-1-16****Proof of service; filing**

Sec. 16. Proof of service in all cases requiring notice, whether by publication, mailing or otherwise, shall be filed before the hearing. Service made by a private person shall be proved by the affidavit of the person; service made by the clerk or other official shall be proved by certificate or return of service.

*(Formerly: Acts 1953, c.112, s.116.)*

**IC 29-1-1-17****Proof of service as evidence**

Sec. 17. Such proof of service shall be received in evidence in any court in this state, and be deemed sufficient proof of the matters and things therein contained.

*(Formerly: Acts 1953, c.112, s.117.)*

**IC 29-1-1-18****Notices; proof of compliance**

Sec. 18. Nothing contained in section 16 or section 17 of this chapter shall preclude any person from proving in any suit or proceeding that the provisions of this article respecting such notice have been complied with, although no such proof of service may have been filed as therein required.

*(Formerly: Acts 1953, c.112, s.118.) As amended by Acts 1982, P.L.171, SEC.8.*

**IC 29-1-1-19****Notice of hearing; waiver**

Sec. 19. Any person legally competent who is required to be served with notice of any hearing in a probate proceeding may in person or by attorney waive in writing issuance and service of notice of the hearing. A guardian of the estate or a guardian ad litem may make the waiver on behalf of a protected person. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of a person residing in a foreign country, may make a waiver of notice on behalf of the person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice.

*(Formerly: Acts 1953, c.112, s.119.) As amended by P.L.33-1989, SEC.32.*

**IC 29-1-1-20****Incapacitated persons; unknown persons; guardians**

Sec. 20. (a) In a proceeding involving estates of decedents or trusts, or in judicially supervised settlements, persons are bound by orders binding others in the following cases:

- (1) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as

objects, takers in default, or otherwise) are subject to the power.

(2) Orders binding a trustee bind beneficiaries of the trust in proceedings:

(A) to probate a will establishing or adding to a trust;

(B) to review the acts or accounts of a prior fiduciary; and

(C) involving creditors or other third parties.

(3) Orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no guardian of the estate or person has been appointed, a parent may represent the parent's minor child.

(4) An interested person:

(A) who is incapacitated;

(B) whose present name, existence, or residence upon diligent inquiry is unknown and cannot be ascertained; or

(C) who is not otherwise represented;

is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(b) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding. Any guardian of the person or estate of the person having an interest may be appointed as a guardian ad litem.

(c) The compensation of a guardian or guardian ad litem and the guardian's expenses including attorney's fees for services rendered in any proceeding under this article may be allowed in such amount and ordered paid either out of the entire estate involved as an expense of administration, or out of the protected person's interest therein as the court in its discretion shall determine.

(d) Any adjudication involving the interests of persons considered represented under this section shall be lawful and binding upon all interested persons, whether born or unborn, whether notified or not notified, and whether represented or not, if the interested persons are of the same class or have interests similar to the predominant interests of any person notified or represented.

*(Formerly: Acts 1953, c.112, s.120.) As amended by Acts 1982, P.L.171, SEC.9; P.L.33-1989, SEC.33; P.L.118-1997, SEC.9.*

## **IC 29-1-1-21**

### **Orders, judgments or decrees; vacating or modifying**

Sec. 21. For illegality, fraud or mistake, upon application filed within one (1) year after the discharge of the personal representative upon final settlement, the court may vacate or modify its orders, judgments and decrees or grant a rehearing therein. Before any such



order, judgment or decree shall be vacated or modified, notice of such application and hearing shall be given to the personal representative and all interested persons as provided in section 12 of this chapter. No vacation or modification under this section shall affect any right acquired by any innocent person in reliance upon any such previous order, judgment or decree.

*(Formerly: Acts 1953, c.112, s.121.) As amended by Acts 1982, P.L.171, SEC.10.*

#### **IC 29-1-1-22**

##### **Appeals; stay of proceedings**

Sec. 22. Any person considering himself aggrieved by any decision of a court having probate jurisdiction in proceedings under this article may prosecute an appeal to the court having jurisdiction of such appeal. Such appeal shall be taken as appeals are taken in civil causes. Executors, administrators, guardians and fiduciaries may have a stay of proceedings without bond.

*(Formerly: Acts 1953, c.112, s.122.) As amended by Acts 1982, P.L.171, SEC.11.*

#### **IC 29-1-1-23**

##### **Record of proceedings; dockets**

Sec. 23. The following records of proceedings under this article shall be maintained in addition to other records as the court having probate jurisdiction shall provide for:

(1) An index in which estates of deceased persons shall be indexed under the name of the decedent, and those pertaining to guardianships under the name of the protected person. After the name of each shall be shown the docket number and page wherein entries pertaining to such decedent's or ward's estate appear.

(2) Decedent's and guardianship estate dockets, in which shall be listed in chronological order under the name of the decedent or protected person, all documents filed or issued and all orders, judgments, and decrees made pertaining to the estate, the date, and a reference to the volume and page of any other book in which any record shall have been made of such document.

(3) A record of wills, properly indexed, in which shall be recorded all wills admitted to probate and a record of the testimony of a witness examined, subscribed by the witness and attested by the clerk with the clerk's signature and seal of office. The will with the testimony and attestation to be certified by the clerk to be a complete record.

(4) An order book, in which shall be entered all proceedings with respect to the estate in conformity with the law pertaining to order books of circuit courts of this state and with the rules of the court.

*(Formerly: Acts 1953, c.112, s.123.) As amended by Acts 1982, P.L.171, SEC.12; P.L.33-1989, SEC.34; P.L.50-1991, SEC.18; P.L.4-1994, SEC.11; P.L.2-1995, SEC.115.*

**IC 29-1-1-24****Fraud; relief for injured parties**

Sec. 24. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this probate code or if fraud is used to avoid or circumvent the provisions or purposes of this probate code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud including restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

*(Formerly: Acts 1975, P.L.288, SEC.1.)*